



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201306030

NOV 16 2012

Uniform Issue List: 408.03-00

T: EP: RA: T2

Legend:

Taxpayer = *****
IRA X = *****
Amount A = *****
Amount B = *****

Dear *****:

This is in response to your request dated April 3, 2012, as supplemented by correspondence dated September 27, 2012, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer represents that she received a distribution from IRA X totaling Amount A. Taxpayer asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to Taxpayer's medical condition and disability which impaired her ability to accomplish a timely rollover. Taxpayer further represents that a portion of Amount A was used; and Amount B has not been used for any other purpose.

Taxpayer received Amount A from IRA X on February 24, 20 . On May 18, 20 , Taxpayer had knee replacement surgery. After she had the surgery, she had several months of physical therapy and was taking medication. She had forgotten about rolling over the funds until she received the Form-1099 for the distribution.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to Amount B, a portion of Amount A.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a

foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Taxpayer has not presented sufficient evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected her ability to roll over Amount A or any portion thereof, to an IRA. Taxpayer has asserted that her failure to accomplish a timely rollover was caused by her medical condition and disability during the 60 day rollover period. However, her knee replacement surgery took place after the expiration of the 60-day rollover period.

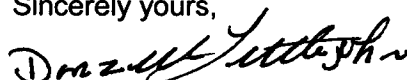
Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount B from IRA X.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact ***** (ID ***-*****) at (****) ***-*****. Please address all correspondence to SE:T:EP:RA:T2 .

Sincerely yours,



Donzell Littlejohn, Manager,
Employee Plans Technical Group

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose